APPENDIX A

Statutes Involved

Title IV of the Career Compensation Act of 1949, 63 Stat. 816—Provisions Relating to Retirement, Retirement Pay, Separation, and Severance Pay for Physical Disability.

* * *

Sec. 402. (b) Upon a determination by the Secretary concerned (1) that a member of a Regular component of the uniformed services entitled to receive basic pay, or a member of a Reserve component of the uniformed services entitled to receive basic pay who has been called or ordered to extended active duty for a period in excess of thirty days, is unfit to perform the duties of his office, rank, grade, or rating, by reason of physical disability incurred while entitled to receive basic pay; (2) that such disability is not due to the intentional misconduct or wilful neglect of such member and that such disability was not incurred during a period of unauthorized absence of such member; (3) that such disability is 30 per centum or more in accordance with the standard schedule of rating disabilities in current use by the Veterans' Administration; (4) that such member has completed at least eight years of active service as defined in section 412 of this title; and (5) that accepted medical principles indicate that such disability may be of a permanent nature, the name of such member shall be placed upon the temporary disability retired list of his service by the Secretary concerned and such members shall be entitled to receive disability retirement pay as prescribed in subsection (d) of this section: *Provided*, That if condition (5) above is met by a finding that such disability is of a permanent nature, such member may be retired by the Secretary concerned and, upon retirement, shall be entitled to receive disability retirement pay as prescribed in subsection (d) of this section: *Provided further*, That if condition (3) above is not met because

the disability is determined to be less than 30 per centum, the number concerned shall not be eligible for any disability retirement provided in this section, but may be separated for physical disability from the service concerned and upon separation shall be entitled to receive disability severance pay as prescribed in section 403 of this title: . . .

* * * * *

Sec. 402 (d) A member of the uniformed services whose name is placed upon the temporary disability retired list of his service pursuant to subsections (a), (b), or (c) of this section, for the period during which his name is carried on such temporary disability retired list, but in no event to exceed a period of five years, or a member of the uniformed services who is retired pursuant to the provisions of this title, shall be entitled to receive disability retirement pay computed, at his election, by multiplying an amount equal to the monthly basic pay of the rank, grade, or rating held by him at the time of the placement of his name on the temporary disability retired list or at the time of his retirement, whichever is earlier, by (1) a number equal to the number of years of active service to which such member is entitled under the provisions of section 412 of this title, multiplied by 2½ per centum, or (2) the percentage of his physical disability as of the time his name was placed on the temporary disability retired list or at the time of retirement, whichever is earlier: *Provided*, That for the purpose of the computation of (1) above, fractions of one-half year or more of active service shall be counted as a whole year: . . .

* * * * *

Sec. 403. A member of the uniformed services separated for physical disability pursuant to the provisions of section 402 of this title shall be entitled to receive disability severance pay computed as follows: An amount equal to two months' basic pay of the rank, grade, or rating held by such member at the time of the placement of his name

on the temporary disability retired list or at the time of his separation, whichever is earlier, and which such member would be entitled to receive at the time of separation if serving on active duty in such rank, grade, or rating, multiplied by a number equal to the number of years of active service to which such member is entitled under the provisions of section 412 of this title but not to exceed a total of two years' basic pay: *Provided*, That for the purpose of this computation, fractions of one-half year or more of active service shall be counted as a whole year: . . .

United States Code, Title 10, Section 1552:

Sec. 1552. Correction of military records: Claims incident thereto

(a) The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. Under procedures prescribed by him, the Secretary of the Treasury may in the same manner correct any military record of the Coast Guard. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(b) No correction may be made under subsection (a) unless the claimant or his heir or legal representative files a request therefor before October 26, 1961, or within three years after he discovers the error or injustice, whichever is later. However, a board established under subsection (a) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c) The department concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary bene-

fits, or for the repayemnt of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be. If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid—

(1) to the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment;

(2) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(3) as otherwise prescribed by the law applicable to that kind of payment.

A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled

under the laws and regulations administered by the Administrator of Veterans' Affairs.

(f) The Secretary of Defense for the military departments, and the Secretary of the Treasury for the Coast Guard, shall report to Congress every six months on claims paid under this section during the period covered by the report. The report shall include for each claim the name of the claimant, a brief description of the claim, and a statement of the amount paid.

United States Code, Title 28, Section 1491

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

* * *

United States Code, Title 28, Section 2501

Sec. 2501. Time for filing suit

Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.

APPENDIX B

Opinion and Judgment Below

IN THE UNITED STATES COURT OF CLAIMS

No. 234-62

CLARENCE CISIN

v.

THE UNITED STATES

ORDER

This case comes before the court on defendant's motion to dismiss the petition filed on February 21, 1963. Upon consideration thereof, together with plaintiff's response, oral argument of counsel and the briefs of the parties, it is concluded that plaintiff's alleged claim is barred by the statute of limitations, 28 U.S.C. § 2501, and

IT IS ORDERED this 15th day of November, 1963, that defendant's motion be and the same is granted, and plaintiff's petition is dismissed.

BY THE COURT,

MARVIN JONES,
Chief Judge.

APPENDIX C

Opinion in United States v. Alire, 1868, 73 [6 Wall.] 573

UNITED STATES v. ALIRE.

A case in the Court of Claims which involves the right of a claimant to a military bounty land warrant under the acts of Congress of March 3d, 1855, and May 14th, 1856, which claim had been rejected by the commissioner of pensions, and the rejection confirmed by the Secretary of the Interior, is apparently within that part of the fifth section of the act of March 3d, 1863, which provides "that

when the judgment or decree will affect a class of cases, or furnish a precedent for the future action of any executive department of the government in the adjustment of such class of cases, . . . and such facts shall be certified to by the presiding justice of the Court of Claims, the Supreme Court shall entertain an appeal on behalf of the United States, without regard to the amount in controversy."

Accordingly, an appeal from a judgment of the Court of Claims in such a case, where there had been no special allowance, and which had been dismissed by this court, because not a judgment for money and over $3000, was, on motion of the United States, reinstated, and the record remanded to the Court of Claims for such further proceedings as might seem fit and proper in the cause as it respected the appeal prayed for.

APPEAL from the Court of Claims.

Julian Alire filed a petition in that court setting forth that under the acts of Congress of March 3d, 1855, and of May 14th, 1856, he had made application to the commissioner of pensions for one hundred and sixty acres of bounty land, and had conformed to the provisions of the said acts, and the rules and regulations of the pension office; that the application was rejected by the commissioner, and that, on appeal to the Secretary of the Interior, the rejection had been confirmed. Issue was taken in the Court of Claims on this petition, and the cause having been afterwards heard before it, a decree was rendered in favor of the petitioner for a bounty land warrant, to be made and delivered to him by the proper officer. It was also further ordered that the decree should be certified by the clerk of the court, under its seal, and remitted to the Secretary of the Department of the Interior.

From this decree the United States appealed, on the ground among others that the court below had no jurisdic-

tion of the case. The soundness of this view depended, of course, on statutes organizing or regulating that court.

The first act* organizing the court was passed February 24th, 1855, and the jurisdiction conferred was "to hear and determine all claims founded upon *any law of Congress*, or upon any regulation of an executive department, or upon any contract, express or implied, with the government of the United States, which may be suggested to it by a petition filed thereip, and also all claims which may be referred to said court by either house of Congress."†

The court was directed to keep a record of their proceedings, and, at the commencement of each session of Congress, and of each month during the session, report to Congress the cases upon which the court had fully acted, stating in each the material facts which they find established by the evidence, with their opinion in the case, and the reasons upon which it is founded. The court were also directed to prepare a bill in the cases determined favorably, in such form as, if enacted, will carry the same into effect.

The next act relating to the organization of the court was passed March 3d, 1863.‡

The second section of this act conferred substantially the same jurisdiction as to cases before the court as in the first section of the previous act; but jurisdiction, in addition, was conferred over set-offs, counter-claims, &c., &c., on the part of the government against the petitioner.

The fifth section provided, that either party might appeal to the Supreme Court of the United States from any final judgment or decree which might thereafter be rendered in the Court of Claims, *wherein the amount in controversy exceeded three thousand dollars.*

* 10 Stat. at Large, 612, § 1.

† § 5.

‡ 12 Stat. at Large, 765.

The seventh section, that in all cases of final judgment by said court, or on appeal by the Supreme Court, where the same was affirmed in favor of the claimant, the *sum* due thereby shall be paid out of any general appropriation made by law for the payment of private claims, on presentation to the Secretary of the Treasury of a copy of said judgment, &c. And in cases where the judgment appealed from is in favor of said claimant, or the same is affirmed by the Supreme Court, *interest* at the rate of five per cent *shall be allowed* from the date of its presentation to the Secretary of the Treasury for payment, but *no interest* shall be allowed subsequent to the affirmance, unless presented for payment to the Secretary of the Treasury as aforesaid, with a proviso that *no interest* shall be allowed on any claim up to the time of the rendition of the judgment by said Court of Claims, unless on a contract expressly stipulating for interest.

The thirteenth section enacted that all laws, and parts of laws, inconsistent with the provisions of this act, were thereby repealed.

Mr. Norton, solicitor for the Court of Claims, contended that the fifth and seventh sections of the act of 1863 showed that the Court of Claims could give no judgments against the United States for anything but money.

Messrs. Hughes, Denvers, and Peck, with Mr. Watts (by brief filed), argued, contra, that the jurisdiction was, by the previous act of 1855, expressly given where the claim was founded on any act of Congress; and that confessedly the claim was here so founded.

Mr. Justice NELSON delivered the opinion of the court.

The only question presented in the record, which we shall examine, is whether or not the court below had jurisdiction of the cause.

It will be seen by reference to the two acts of Congress on this subject, that the only judgments which the Court of

Claims are authorized to render against the government, or over which the Supreme Court have any jurisdiction on appeal, or for the payment of which by the Secretary of the Treasury any provision is made, are judgments for money found due from the government to the petitioner. And, although it is true that the subject-matter over which jurisdiction is conferred, both in the act of 1855 and of 1863, would admit of a much more extended cognizance of cases, yet it is quite clear that the limited power given to render a judgment necessarily restrains the general terms, and confines the subject-matter to cases in which the petitioner sets up a moneyed demand as due from the government.

This view is confirmed by the judgment of this court in the case of *Gordon, Adm'r*, v. *United States*,* in which the court denied any jurisdiction over the case on account of the power of the executive department over its judgment by the fourteenth section of the act of 1863. That section was repealed by the first section of the act of March 17th, 1866.

The decree, or judgment, in the present case is, that the claimant recover of the government a military land warrant for one hundred and sixty acres of land, and that it be made out and delivered to the said Julian Alire by the proper officer, and the decree to be certified and remitted to the Secretary of the Interior. We find no provision in any of the statutes requiring a judgment of this character, whether in this court or in the Court of Claims, to be obeyed or satisfied. Nor does either court possess any authority to render such a judgment, as is apparent from a perusal of the seventh section of the act of 1863, and which is the only one providing for the rendition of a judgment or decree in any case before the court below.

Even if the first section of the act of 1855 and the second of 1863 could be construed as giving a jurisdiction in cases

* 2 Wallace, 561; 1 Court of Claims Reports, 83; Acts establishing the Court of Claims.

other than money demands against the government, no judgment could be rendered by the court below, and, of consequence, the carrying into effect their finding must depend on the act of 1855. But we are of opinion that it was intended by the several provisions of the act of 1863 that the cases to be heard were to pass into a judgment as prescribed in the seventh section of the latter act, and hence they must be such in their nature and character as may admit of a judgment or decree in conformity with its provisions.

Our conclusion is, the court below had no jurisdiction of this case, and that the decree must be reversed, and the cause remanded to the court with directions to enter a decree dismissing the petition.

NOTE.

A motion was subsequently made on the part of the United States to reinstate on the docket this cause, dismissed as above stated at this term on the ground that it did not appear that the amount in controversy exceeded $3000), and to remand it to the Court of Claims with a view to an amended or special appeal under the fifth section of the act of March 3d, 1863,* which provides "that when the judgment or decree will affect a class of cases or furnish a precedent for the future action of any executive department of the government in the adjustment of such class of cases, . . . and such facts shall be certified to by the presiding justice of the Court of Claims the Supreme Court shall entertain an appeal on behalf of the United States, without regard to the amount in controversy."

Mr. Justice NELSON delivered the opinion of the court.

The case involves the right of the claimant to a military bounty land warrant under the acts of Congress passed March 3d, 1855, and May 14th, 1856, which claim had been

* 12 Stat. at Large, 765 6.

rejected by the commissioner of pensions, and the rejection confirmed by the Secretary of the Interior. The case would seem to fall within the provision providing for a special appeal on behalf of the government. We see no valid objection to the motion, and therefore direct the cause to be reinstated on the docket, and the record remanded back to the Court of Claims for such further proceedings as may seem fit and proper in the cause as it respects the appeal prayed for.

Remanded Accordingly